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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Federal Trade Commission,

10 Plaintiff,

11 v.

12 James D. Noland, Jr., et al.,

13 Defendants.
14

No. CV-20-00047-PHX-DWL

ORDER

15 Pending before the Court is the Receiver's third motion for fees and costs. (Doc.
16 180.) The individual defendants have filed an opposition (Doc. 185) and the Receiver has
17 filed a reply (Doc. 189). For the following reasons, the motion will be granted.

18 This is not the first time the individual defendants have disputed the Receiver's
19 entitlement to fees. In response to her previous request, the individual defendants raised a
20 categorical objection, arguing she should not receive any payment for her work because
21 "she is acting contrary to the best interests of the Corporate Defendants by deciding before
22 a trial that there has been a violation of law and acting accordingly. Specifically, she is
23 liquidating the Corporate Defendants rather than preserving their Assets. This liquidation
24 means she is killing the corporations, not simply maintaining them, the worst kind of
25 dissipation of Assets. She should not, therefore, get fees." (Doc. 146 at 1.) The Court
26 rejected this argument and granted the previous application in full, explaining:

27 The Court is satisfied that Ms. Friday is carrying out her duties as receiver,
28 as those duties are specified in the preliminary injunction, in a reasonable
and diligent manner. Ms. Friday inherited a difficult situation—she took

1 control of entities that the FTC has demonstrated were likely operating as a
2 pyramid scheme, discovered that some of the entities' inventory was tainted
3 with an illegal ingredient and that the entities had not been following
4 necessary business practices and legalities, and then had to confront the
5 COVID-19 pandemic. Although the individual defendants are
6 understandably frustrated by the fact that the entities they helped create are
7 no longer operating in the fashion they envisioned, their true disagreement is
8 with the Court's preliminary injunction ruling (which they did not appeal),
9 not with Ms. Friday's conduct.

10 (Doc. 154 at 5-6.)

11 In response to the current motion, the individual defendants again contend the
12 Receiver should not receive any payment for her work. This time, they argue that
13 compensation is categorically impermissible because the funds being used to compensate
14 the Receiver come from frozen assets and Supreme Court is "likely" to hold, in a future
15 case that has not yet been argued, that the FTC lacks the authority to obtain an asset freeze
16 in an enforcement action. (Doc. 185 at 2.) This argument is unavailing. As discussed in
17 detail in a previous order (Doc. 177 at 7-10), this Court is bound to follow existing Ninth
18 Circuit law, which allows the FTC to seek an asset freeze, and may not disregard that
19 binding precedent based on guesses about future Supreme Court decisions.

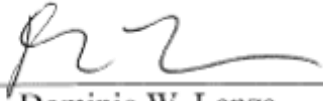
20 The individual defendants also raise two targeted objections to portions of the
21 Receiver's fee request. First, they ask the Court to deny reimbursement for any time spent
22 "collaborating with the FTC" concerning how to oppose motions filed by the individual
23 defendants and how to amend the FTC's complaint. (Doc. 185 at 2-3.) But as the Receiver
24 correctly points out in her reply (Doc. 189 at 3-4), the bulk of the challenged time was
25 spent responding to the individual defendants' motions to remove ECF from the
26 receivership and to permit their counsel to replace the Receiver as the corporate defendants'
27 counsel. It was eminently reasonable for the Receiver to prepare and file her own responses
28 to those motions because they directly challenged her authority and conduct. It was also
reasonable and appropriate for the Receiver to respond to factual questions from the FTC
concerning the individual defendants' compliance with their obligations under the
preliminary injunction.

1 Second, the individual defendants seek a reduction because the Receiver's fees are
2 "extravagant," both due to the sheer amount billed to date (more than \$200,000) and
3 because "most of the work for which the receiver is seeking compensation . . . is ministerial
4 in nature." (Doc. 185 at 1-3.) These claims lack merit. Having carefully reviewed the
5 Receiver's billing entries and having carefully considered the factors specified in *In re San*
6 *Vicente Medical Partners, Ltd.*, 962 F.2d 1402 (9th Cir. 1992), the Court is satisfied that
7 the Receiver's fees—which are based on a discounted hourly rate—are reasonable and not
8 excessive or extravagant, particularly given the challenging nature of her work in this case.

9 Accordingly, **IT IS ORDERED** that the Receiver's third motion for fees and costs
10 (Doc. 180) is **granted**.

11 **IT IS FURTHER ORDERED** that the Receiver is hereby authorized and directed
12 to pay from the receivership assets in this case and in the possession of the Receiver: (1)
13 the amount of \$50,450 to the Receiver for services rendered and costs incurred or paid
14 during the period May 1, 2020, through July 31, 2020; (2) the amount of \$39,454.25 to
15 Osborn Maledon, P.A. for services rendered and costs incurred or paid during the period
16 May 1, 2020, through July 31, 2020; and (3) the amount of \$10,040.70 to Simon Consulting
17 for services rendered and costs incurred or paid during the period May 1, 2020, through
18 July 31, 2020.

19 Dated this 21st day of September, 2020.

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23 _____
24 Dominic W. Lanza
25 United States District Judge
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